

## REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed May 15, 2007. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **I. Claim Rejections - 35 U.S.C. § 102(e)**

Claims 20, 21, 23, and 24 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Mullen, et al.* ("Mullen," U.S. Pub. No. 2004/0243997).

Applicant notes that independent claim 20 has been amended through this Response. In view of that amendment, Applicant respectfully submits that the rejections are moot as having been drawn against Applicant's claims in another form. Applicant therefore respectfully requests that the rejections be withdrawn.

Regarding the merits of claim 20, Applicant notes that Mullen at least does not teach a "computing device" comprising an "installer program" that is configured to "(i) determine the configuration of the existing operating system from the configuration information of the management interface, (ii) determine the configuration of a new operating system that is to replace the existing operating system from information stored within a software package that contains the new operating system, (iii) determine whether installation of the new operating system is authorized through comparison of the configurations of the new and existing operating systems, and (iv) prevent installation of the new operating system if installation is not authorized". For example, Mullen does not describe an installer program that is configured to prevent installation of a new operating system.

## II. Claim Rejections - 35 U.S.C. § 103(a)

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.

In the present case, the prior art does not teach or suggest all of the claim limitations, and there is no suggestion or motivation in the prior art to modify the references to include those limitations.

**A. Rejection of Claims 1, 2, and 8**

Claims 1, 2, and 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herrick* (U.S. Pub. No. 2004/0181790) in view of *Matyas, Jr., et al.* ("Matyas," U.S. Pat. No. 7,051,211).

Applicant notes that independent claim 1 has been amended through this Response. In view of that amendment, Applicant respectfully submits that the rejections are moot as having been drawn against Applicant's claims in another form. Applicant therefore respectfully requests that the rejections be withdrawn.

Turning to the merits of claim 1, neither *Herrick* nor *Matyas* teaches or suggests "an installer program that executes on the computing device determining the configuration of an existing program that executes on the computing device", "the installer program that executes on the computing device determining the configuration of a new program that is to be installed on the computing device to replace the existing program from information stored within a software package that comprises the new program", "the installer program that executes on the computing device determining whether installation of the new program is authorized through comparison of the configurations of the new and existing programs", or "the installer program that executes on the computing device preventing installation of the new program if installation is not authorized". Regarding the *Herrick* reference, Applicant notes that *Herrick* describes obtaining a "list identifying a desired configuration" and determining whether the latest version of software should be installed from the desired configuration. See *Herrick*, paragraphs 0008-0009.

**B. Rejection of Claims 3-5**

Claims 3-5 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herrick* in view of *Matyas* and further in view of *Mullen*.

As identified above, *Herrick* and *Matyas* do not teach aspects of Applicant's claims. In that *Mullen* does not remedy the deficiencies of the *Herrick* and *Matyas* references, Applicant respectfully submits that claims 3-5 are allowable over the *Herrick/Matyas/Mullen* combination for at least the same reasons that claim 1 is allowable over *Herrick/Matyas*.

**C. Rejection of Claim 6**

Claim 6 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herrick* in view of *Matyas* in view of *Delgado, et al.* ("Delgado," U.S. Pub. No. 2005/0066324) and further in view of *Ahuje* (U.S. Pat. No. 6,122,732).

As identified above, *Herrick* and *Matyas* do not teach aspects of Applicant's claims. In that neither *Delgado* nor *Ahuje* remedy the deficiencies of the *Herrick* and *Matyas* references, Applicant respectfully submits that claim 6 is allowable over the *Herrick/Matyas/Delgado/Ahuje* combination for at least the same reasons that claim 1 is allowable over *Herrick/Matyas*.

**D. Rejection of Claim 7**

Claim 7 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herrick* in view of *Matyas* and further in view of *Kadam, et al.* ("Kadam," U.S. Pub. No. 2003/0079126).

As identified above, Herrick and Matyas do not teach aspects of Applicant's claims. In that Kadam does not remedy the deficiencies of the Herrick and Matyas references, Applicant respectfully submits that claim 7 is allowable over the Herrick/Matyas/Kadam combination for at least the same reasons that claim 1 is allowable over Herrick/Matyas.

**E. Rejection of Claims 15, 16, 18, and 19**

Claims 15, 16, 18, and 19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herrick* in view of *Mullen* in view of *Matyas*. Applicant respectfully traverses the rejection.

Applicant notes that independent claim 15 has been amended through this Response. In view of that amendment, Applicant respectfully submits that the rejections are moot as having been drawn against Applicant's claims in another form. Applicant therefore respectfully requests that the rejections be withdrawn.

Turning to the merits of claim 15, Applicant notes that none of the applied references teach or suggest an installer program comprising "logic configured to execute on a user computer and determine on the user computer the type and version of an existing operating system embedded in memory of the user computer" and "logic configured to execute on the user computer and determine on the user computer the type and version of a new operating system that has been downloaded to the user computer", or "logic configured to execute on the user computer and prevent installation of the new program on the user computer if installation is not authorized". Applicant refers to the discussion of the Herrick reference provided above in relation to claim 1.

**F. Rejection of Claim 17**

Claim 17 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herrick* in view of *Mullen* in view of *Matyas* and further in view of *Kadam*. Applicant respectfully traverses the rejection.

As identified above, *Herrick*, *Mullen*, and *Matyas* do not teach aspects of Applicant's claims. In that *Kadam* does not remedy the deficiencies of the *Herrick*, *Mullen*, and *Matyas* references, Applicant respectfully submits that claim 17 is allowable over the *Herrick/Mullen/Matyas/Kadam* combination for at least the same reasons that claim 15 is allowable over *Herrick/Mullen/Matyas*.

**G. Rejection of Claim 22**

Claim 22 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mullen* in view of *Delgado* and further in view of *Ahuje*. Applicant respectfully traverses the rejection.

As identified above, *Mullen* does not teach aspects of Applicant's claim 20. In that neither *Delgado* nor *Ahuje* remedy the deficiencies of the *Mullen* reference, Applicant respectfully submits that claim 22 is allowable over the *Mullen/Delgado/Ahuje* combination for at least the same reasons that claim 20 is allowable over *Mullen*.

### **III. Canceled Claims**

Claims 10-14 and 23 have been canceled from the application without prejudice, waiver, or disclaimer. Applicant reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

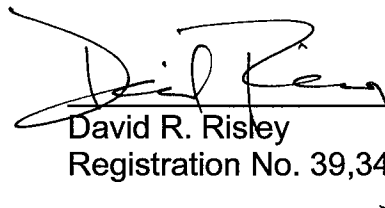
### **IV. New Claims**

Claims 25-27 have been added into the application through this Response. Applicant respectfully submits that these new claims describe an invention novel and unobvious in view of the prior art of record and, therefore, respectfully requests that these claims be held to be allowable.

### **CONCLUSION**

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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